



## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Parts 1220 and 1222

[FDMS No. NARA-22-0020; NARA-2022-067]

RIN 3095-AC08

### Federal Records Management: Managing Electronic Records, Including Electronic Messages

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Final rule.

**SUMMARY:** We are amending our regulations on creating and maintaining Federal records to explicitly include record-keeping requirements for electronic records. On January 1, 2021, the Federal Records Act was amended. It now requires the Archivist of the United States to promulgate regulations governing Federal agency preservation of electronic messages that are determined to be records. We are amending our regulations to define electronic messages and to expressly state records management requirements for electronic records, including electronic messages.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Regulatory and External Policy Program (MP); Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740-6001.

**FOR FURTHER INFORMATION CONTACT:** Edward Germino, Strategy and Performance Division, by email at [regulation\\_comments@nara.gov](mailto:regulation_comments@nara.gov), or by telephone at 301-837-3758.

Contact [rmstandards@nara.gov](mailto:rmstandards@nara.gov) with any questions on electronic records management.

### SUPPLEMENTARY INFORMATION:

#### Background

On January 1, 2021, Public Law 116-283 amended the Federal Records Act at 44 U.S.C. 2912 to require the Archivist of the United States to promulgate regulations governing Federal agency preservation of electronic messages that are records. The law states that the regulations must require agencies to electronically capture, manage, and preserve electronic message records, and must require that they can readily access such records through electronic searches. Additionally, the regulations should include timelines for Federal agencies to implement the resulting regulatory requirements as expeditiously as practicable.

We are amending 36 CFR part 1220, Federal Records; General, to define electronic messages and incorporate them into all existing requirements governing Federal records. We are also modifying 36 CFR part 1222, Creation and Maintenance of Federal Records, to specifically restate that the capture, management, and preservation of electronic records, including electronic messages, is an essential part of a Federal records management program.

These changes incorporate electronic messages into existing regulations on electronic records management. The current regulations in 36 CFR part 1236, Electronic Records Management, already state that records management controls are needed to ensure that Federal records in electronic information systems can provide adequate and proper documentation of agency business for as long as the information is needed. Part 1236 also requires agencies to ensure all records in electronic information systems are retrievable and usable for as long as they need the records to conduct agency business. In addition, 36 CFR 1222.22 currently specifies requirements for adequate documentation of agency business. These existing regulations apply to all electronic records, including electronic messages.

We are not providing agencies with a timeline for implementing these requirements. The Archivist of the United States has previously promulgated regulations that cover the requirements set forth in Public Law 116-283, and agencies have been required to implement them for some time already. These requirements are effective on the effective date of this final rule.

## **Regulatory Analysis**

*Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulation Review*

The Office of Management and Budget (OMB) has reviewed this rulemaking and determined it is not “significant” under section 3(f) of Executive Order 12866. It is not significant because it applies only to Federal agencies, updates the regulations due to a statutory requirement, the new requirements are being added to clarify ones that agencies have already been required to follow, and is not establishing a new program. The requirements are necessary to comply with statute and to ensure agencies are appropriately preserving records.

*Regulatory Flexibility Act (5 U.S.C. 601, et seq.)*

This review requires an agency to prepare an initial regulatory flexibility analysis and publish it when the agency publishes the proposed rule. This requirement does not apply if the agency certifies that the rulemaking will not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 603). We certify, after review and analysis, that this rulemaking will not have a significant adverse economic impact on small entities.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et seq.) requires that agencies consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information we conduct, sponsor, or require through regulations. This rulemaking does not impose additional information collection requirements on the public that are subject to the Paperwork Reduction Act.

*Executive Order 13132, Federalism*

Executive Order 13132 requires agencies to ensure State and local officials have the opportunity for meaningful and timely input when developing regulatory policies that may have a substantial, direct effect on the states, on the relationship between the Federal Government and

the states, or on the distribution of power and responsibilities among the various levels of government. If the effects of the rule on State and local governments are sufficiently substantial, the agency must prepare a Federal assessment to assist senior policy makers. This rulemaking will not have any effects on State and local governments within the meaning of the E.O.

Therefore, no federalism assessment is required.

*Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4; 2 U.S.C. 1532)*

The Unfunded Mandates Reform Act requires that agencies determine whether any Federal mandate in the rulemaking may result in State, local, and Tribal governments, in the aggregate, or the private sector, expending \$100 million in any one year. NARA certifies that this rulemaking does not contain a Federal mandate that may result in such an expenditure.

#### **List of Subjects in 36 CFR Parts 1220 and 1222**

Archives and records.

For the reasons discussed in the preamble, NARA amends 36 CFR parts 1220 and 1222 as follows:

#### **PART 1220 – FEDERAL RECORDS; GENERAL**

1. The authority citation for part 1220 continues to read as follows:

**Authority:** 44 U.S.C. Chapters 21, 29, 31, and 33.

2. In § 1220.18, add a definition in alphabetical order for “Electronic messages” to read as follows:

#### **§ 1220.18 What definitions apply to the regulations in Subchapter B?**

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*Electronic messages* means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals. Electronic messages that satisfy the definition of a Federal record under the Federal Records Act are electronic records.

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#### **PART 1222 – CREATION AND MAINTENANCE OF FEDERAL RECORDS**

3. The authority citation for part 1222 continues to read as follows:

**Authority:** 44 U.S.C. 2904, 3101, 3102, and 3301.

4. In § 1222.26:

- a. Revise the section heading;
- b. Redesignate the introductory text as paragraph (a) introductory text;
- c. Redesignate paragraphs (a) through (e) as paragraphs (a)(1) through (5); and
- d. Add a new paragraph (b).

The revision and addition read as follows:

**§ 1222.26 What are the general recordkeeping requirements for agencies?**

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(b) Agencies must capture, manage, and preserve electronic records with appropriate metadata and must be able to access and retrieve electronic records, including electronic messages, through electronic searches.

**Debra Steidel Wall,**

*Acting Archivist of the United States.*